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Note verbale dated 8 November 2005 from the Permanent Mission of Denmark to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of Denmark to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1540 (2004) and, with reference to the latter's letter dated 8 September 2005, has the honour to transmit herewith the second report of Denmark, in accordance with paragraph 4 of Security Council resolution 1540 (2004) (see annex).

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Annex to the note verbale dated 8 November 2005 from the Permanent Mission of Denmark to the United Nations addressed to the Chairman of the Committee

Response of the Government of Denmark to the letter dated 8 September 2005 from the 1540 Committee regarding Denmark's implementation of Security Council resolution 1540 (2004)

The Government of Denmark refers to the letter dated 8 September 2005 from the Chairman of the Security Council Committee established pursuant to Resolution 1540, in which *inter alia* additional information and clarification is requested regarding Denmark's implementation of Resolution 1540 further to the National Report of Denmark submitted to the Committee on 28 October 2004.

With specific reference to paragraph 3 of the above letter, the Danish Government would like to inform the Committee that Denmark does not have any objection to the use of the official public data provided to international organizations, as identified in the matrix prepared by the Committee.

Below please find additional information and clarification regarding steps taken by Denmark to implement Resolution 1540 with regard to the areas identified in the Committee's letter. Supplementary to this information, reference is also made to the following:

- Relevant provisions of the Danish Weapons Act, the Danish War Equipment Act, and the Danish Criminal Code,*
- Specific amendments and clarifications to the information contained in the Committee's matrix with regard to operative paragraphs 2 and 3(d) of resolution 1540 (2004) (see enclosure).

1. Further details on national legislation or other legal measures your Government has implemented or intends to implement to prohibit any non-State actors to manufacture, acquire, development, possess, transport, transfer, use nuclear, chemical, biological weapons and their means of delivery, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them.

a) Clarification of the scope of the Weapons Act and the Criminal Code

Producing, acquiring, possessing, developing, transferring and using nuclear, chemical and biological weapons and their means of delivery without a license from the Ministry of Justice is

* The text of laws and regulations is on file with the Secretariat and is available for consultation.

prohibited, cf. the Weapons Act, Sections 1, 2, and 5. Violators can be punished according to the Weapons Act, Section 10, and in certain cases the Criminal Code, Section 192 a.

The term 'to possess' covers transporting as well as stockpiling/storing on Danish territory, whereas transportation of weapons outside Danish territory is regulated by the Weapons Act, Section 7 a, the scope of which was described in Denmark's National Report submitted on 28 October 2004.

Attempt to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them is likewise prohibited, cf. the Criminal Code, Sections 21 and 23.

Terrorist offences involving nuclear, chemical and biological weapons are regulated by the Criminal Code, Sections 114, 114 a, and 114 b.

b) Administration of licenses under the Weapons Act

From the wording of sections of the Weapons Act referred to above, it may appear that the Ministry of Justice has the power to issue licenses to produce, acquire, possess, develop, transfer and use any kind of weapons. However, the Ministry of Justice is obliged to strictly observe Denmark's international obligations, which in the area of non-proliferation of nuclear, chemical and biological weapons (apart from UN Security Council Resolutions) *inter alia* include the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), the Chemical Weapons Convention (CWC) and the Biological and Toxin Weapons Convention (BWC). Consequently, the Ministry of Justice is *legally* excluded from issuing licenses violating these obligations.

In this context it should be clarified that according to general principles of Danish law administrative authorities are obliged to strictly observe Denmark's international obligations when exercising discretionary powers (the so-called rule of instruction).

c) Additional information on ongoing/planned initiatives

In order to enhance transparency in weapons transfers, the Danish Government has since 1999 annually published a report, which provides information on Danish exports of weapons and military equipment. The report provides information on *inter alia* the number and value of export licenses granted, the recipient countries, and the category of weapons or equipment exported (according to common EU definitions). For further information on this annual reporting, please see section 3 below.

As mentioned in Denmark's National Report of 28 October 2004, the Danish Government intends to introduce a bill to the Parliament by the end of 2005 with amendments to the Weapons Act with a view to further strengthen the Danish legal framework on chemical, biological and nuclear weapons and their means of delivery.

Apart from a general update of the terminology applied in the Weapons Act, the bill is *inter alia* envisaged to imply further restrictions on exterritorial transportation of chemical, biological and nuclear weapons, as well as an explicit ban on the development of means of delivery.

d) Additional information on recent Danish legislation

By Act No. 555 of 24 June 2005, which is an amendment to the Weapons Act, cf. Consolidated Act No. 918 of 10 September 2004, Denmark has introduced a new set of rules concerning arms brokering and technical assistance in relation to chemical, biological or nuclear weapons and missiles specifically elaborated or modified for the delivery of such weapons. Furthermore, rules on intangible transfer of software and technology regarding weapons have been introduced. These rules took effect on 1 July 2005.

According to the Weapons Act, Section 7 b (1), it is prohibited without a license from the Minister of Justice as a broker to negotiate or arrange transactions that involve the transfer of weapons etc., as defined in Section 6 (1) of the Weapons Act, between countries outside the EU. Furthermore, it is prohibited to buy or sell weapons etc., as defined in Section 6 (1), as part of a transfer between countries outside the EU, or, as the owner of the weapons etc., to arrange such a transfer. Section 7 b (1) does not apply to activities carried out in another EU Member State or outside EU by individuals residing abroad, cf. Section 7 b (2). It should be noted that Section 7 b implements the European Council Common Position 2003/468/CFSP of 23 June 2003 on the control of arms brokering.

According to the Weapons Act, Section 7 c (1), it is prohibited to provide technical assistance outside the EU in relation to chemical, biological or nuclear weapons and missiles specifically elaborated or modified for delivery of such weapons. According to Subsection 2, technical assistance is defined as any technical support related to repairs, development, manufacture, assembly, testing, maintenance or any other technical service, that may take form as instruction, training, transmission of working knowledge or skills or consulting services. According to Section 7 c (3), Subsection 1 does not apply to technical assistance provided in countries, which according to the European Council Regulation setting up a community regime for the control of dual use items and technology are covered by the Community general export authorizations, and technical assistance which merely include the transfer of information that is already available in the public domain or relates to basic scientific research. The Minister of Justice may grant an exemption from the ban in Subsection 1, cf. Section 7 c (4). Exemption under Section 7 c (4) can only be granted exceptionally and under very special circumstances. It should be noted that Section 7 c implements the European Council Joint Action on 22 June 2000 (2000/401/CFSP) with the exception of technical assistance concerning dual use items, as dual use items does not fall under the Weapons Act.

The provision of technical assistance concerning dual use items is prohibited according to the Act on the application of certain European Communities Acts on economic relations to third

countries (The Ministry of Economic and Business Affairs, Consolidated Act No 474 of 14th of June 2005). This amendment implemented the part of the European Council Joint Action on 22 June 2000 (2000/401/CFSP) which concerns dual use items.

According to the Act on the application of certain European Communities Acts on economic relations to third countries, technical assistance is defined as any technical support related to repairs, development, manufacture, assembly, testing, maintenance or any other technical service, that may take the form of instruction, training, transmission of working knowledge or skills or consulting services. According to Section 1 a (4), Subsection 1 does not apply to technical assistance provided to countries which, according to the European Council Regulation, are setting up a community regime for the control of dual use items and technology covered by the Community general export authorizations, nor to technical assistance that merely encompasses the transfer of information already available in the public domain or relates to basic scientific research. The Minister of Economic and Business Affairs may grant an exemption from the ban in Subsection 1, cf. Section 1 a (5). Exemption under Section 1 a (5) is only granted on an exceptional basis.

According to the Weapons Act, Section 6 (3), Section 6 (1) applies to the physical export of items from the Danish territory as well as non-physical transmissions abroad by fax, telephone or any other electronic media. Oral transmission of technology by telephone or similar means of communication is only covered by Section 6 (1) where the technology is contained in a document, the relevant part of which is read out over the telephone, or described over the telephone in such a way as to achieve substantially the same result, as if reading out had taken place.

2. Laws and regulations as well as law enforcement efforts your Government has taken or intends to take to develop, maintain appropriate national measures to account for and physically protect nuclear, chemical, biological weapons and their means of delivery, including related materials.

Reference is made to the information provided in Denmark's National Report of 28 October 2004 with respect to implementation of operative paragraph 3 where it is underlined that Denmark does not possess nuclear, chemical or biological *weapons*. With respect to measures to account for and physically protect *related materials*, the following supplementary information can be provided:

a) Nuclear materials

The Danish legislation stipulating national measures to account for, secure and physically protect non-fissile radioactive materials is part of the overall Danish legislation on radiation protection. The main legal instrument is Act No. 94 of 31 March 1953 on use etc. of radioactive materials 1953 (the Radioactive Materials Act). According to the Radioactive Materials Act, the national

regulatory authority is the National Institute of Radiation Hygiene (NIRH) which part of the National Board of Health under the Ministry of Interior and Health.

NIRH is empowered to issue detailed legislation regarding production, import/export, transfer, use, storage, transport, disposal, etc. of radioactive materials and to inspect all holders of authorisations and locations, where radioactive materials are or could be present. NIRH is empowered to withdraw licenses, stop ongoing operations, secure sources etc. in case of insecure situations. According to the Radioactive Materials Act, production, import, possession etc. of radioactive materials are subject to prior authorisation by NIRH. Furthermore, NIRH keeps a national register with records of all holders of authorisations and of the radioactive materials in their possession.

NIRH has initiated the process of introducing the necessary amendments to the legislation in force in order to implement EU Council Directive 2003/122/EURATOM of 22 December 2003 on the control of high-activity sealed radioactive sources and orphan sources. Amendments to implement the measures recommended with the IAEA Code of Conduct on the Safety and Security of Radioactive Sources and with the IAEA Guidance for the Import and Export of Radioactive Sources will be added at the same time. The process is expected to be finalised by the end of 2005.

With respect to Denmark's implementation of the IAEA's Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, reference is made to the Danish National Report submitted prior to the Second Review meeting for the Joint Convention, to be held in May 2006. The Danish report is available at the following link: http://www.sst.dk/publ/Publ2005/SIS/Joint_Convention/Joint_Convention_Report_2005.pdf

Denmark and the EU have welcomed the outcome of the conference to amend the Convention on the Physical Protection of Nuclear Materials (CPPNM), which took place in Vienna in July 2005. Denmark has initiated the process of national ratification of the adopted amendments to the Convention. The Danish Emergency Management Agency under the Ministry of Defence is the national agency responsible for CPPNM.

b) Chemical materials

All obligations following the Danish ratification of the Chemical Weapons Convention (CWC) are fully enacted in Danish law in Act no. 443 of 14 June 1994 (with later changes) about inspections, declarations and control according to the CWC, as well as in secondary legislation (National Agency for Enterprise and Construction, Executive Order no. 235 of 30 March 2004). The implementation legislation comprises the transfer of obligations for trade in scheduled chemicals, including the obligation not to transfer to or receive Schedule 2 chemicals from non-States Parties.

Furthermore, Denmark has established a detailed reporting system whereby producers, processors, consumers, importers and exporters of chemicals listed in the Convention's schedules provide relevant information to the Danish National Authority (National Agency for Enterprise and Construction), which is then collated and transmitted to the OPCW in the form of declarations. At the moment, nine Danish companies are declarable under the Convention, of which eight also are inspectable (mostly so-called 'Other Chemical Production Facilities' producing DOC/PSF chemicals).

The OPCW undertakes inspections to verify that the activities of the companies are carried out in accordance with the provisions of the Convention, including verification of the information provided in the declarations. The inspectors of the OPCW are escorted by the National Agency for Enterprise and Construction. Until now, the OPCW has carried out four routine inspections of Danish companies.

With regard to physical protection of chemical materials, the Danish chemical sector is regulated by the Chemical Substances and Products Act (Consolidated Act from the Ministry of Environment and Energy No. 21 of January 16, 1996). The scope of this Act extends to all chemical substances and products manufactured, imported or sold in Denmark. The Act supplements other legislation, including *inter alia* the Danish Environmental Protection Act, Working Environment Act and Food Act.

c) Biological materials

The Danish national control and physical protection of biological materials are regulated by various laws dealing with safety issues. There is a long-standing tradition in this field, and the existing national rules and regulations ensure protection of the workforce and the environment against accidental releases. This includes the Danish Medicines Act, the Danish Health and Safety at Work Act and municipal environmental supervision. Relevant ADR and IATA regulations regarding transportation safety are incorporated into Danish law.

In 2004, the Danish Government decided to consolidate the national chemical, biological, radiological and nuclear (CBRN) preparedness through the establishment of a national CBRN Institute. The Institute will contribute to a further strengthening of national protection and control especially regarding biological materials. The establishment of the CBRN Institute may lead to additional adjustments of relevant national legislation.

3. Laws and regulations as well as law enforcement efforts your Government has taken or intends to take to review appropriate national export and trans-shipment controls, including penalties for violations of controls, over nuclear, chemical, biological weapons and their means of delivery, including related materials.

Danish controls on exports and trans-shipment are continuously reviewed and updated in accordance with national procedures and policies as well as decisions and recommendations emanating from international organisations and export control regimes to which Denmark is a part. This process involves not only exports and trans-shipment controls, but a wide range of activities related to the transfer of nuclear, chemical and biological weapons and their means of delivery, including related materials, as reflected in Resolution 1540.

In recent years, this has led to changes in rules and procedures related to both dual-use goods and arms and covering such activities as exports, transports, brokering, intangible transfers, transit and trans-shipment, end-use controls, enforcement and transparency.

With respect to transparency, the constant stock-taking and review of controls is documented in annual public reports on export controls giving details of legislation and administrative practices related to arms and dual-use goods. The report includes comprehensive statistics and a section summarising Danish and international developments over the previous year, including any new guidelines, rules and legislation and how they are implemented. An English version is in preparation.

The steady review of controls is based on both national and international cooperation between partners.

Nationally, an inter-agency Export Control Committee meets regularly to review developments, coordinate action and identify any changes necessary to implement relevant decisions and recommendations in the field of export controls. This Committee is chaired by the dual-use licensing authority in Denmark, the Agency for Housing and Construction under the Ministry of Economic and Business Affairs, and includes representatives from the Ministries of Foreign Affairs, Justice, Defence and Science and Technology as well as a number of subordinate bodies.

An additional ad hoc Committee was set up under the Ministry of Foreign Affairs to oversee the implementation of Resolution 1540 in Denmark.

Internationally, Denmark participates actively in all export control regimes as well as the European Union's export controls for arms and dual-use products. As a contribution to the efforts of these regimes - and to the implementation of Resolution 1540 - Denmark will assume the chairmanship of the Missile Technology Control Regime (MTCR) for one year beginning in the autumn of 2006.

Enclosure

Specific amendments and clarifications to the information contained in the Committee's matrix with regard to operative paragraph 2 and 3(d) of Resolution 1540

Does national legislation exist which prohibits persons or entities to engage in one of the following activities? Can violators be penalized?	**YES**	**National legal framework** **If YES, indicate source document of national implementation law**	**YES**	**Enforcement: civil/criminal penalties and others** **If YES, indicate source document**
1. Manufacture/produce	X	Weapons Act, Section 1 (1) (4) Weapons Act, Section 5 War Equipment Act, Section 2 (1), cf. Section 1 (1)	X	Weapons Act, Section 10 Criminal Code, Section 192 a (1) (highly dangerous weapon) Criminal Code, Section 114 (1) (6) (terrorist purposes)
2. Acquire	X	Weapons Act, Section 2 (1), cf. Section 1 (1) (4)	X	Weapons Act, Section 10
3. Possess	X	Weapons Act, Section 2 (1), cf. Section 1 (1) (4)	X	Weapons Act, Section 10 Criminal Code, Section 192 a (1) (highly dangerous weapon) Criminal Code, Section 114 (1) (6) (terrorist purposes)

4. Stockpile/store	X	Weapons Act, Section 2 (1), cf. Section 1 (1) (4)	X	Weapons Act, Section 10 Criminal Code, Section 192 a (1) (highly dangerous weapon) Criminal Code, Section 114 (1) (6) (terrorist purposes)
5. Develop	X	Weapons Act, Section 5	X	Weapons Act, Section 10 Criminal Code, Section 192 a (2) (highly dangerous weapon) Criminal Code, Section 114 (1) (6) (terrorist purposes)
6. Transport	X	Weapons Act, Section 2 (1), cf. Section 1 (1) (4) (on Danish territory) Weapons Act, Section 7 a	X	Weapons Act, Section 10 Criminal Code, Section 192 a (1) (highly dangerous weapon) Criminal Code, Section 114 (1) (6) and 114 (2) (terrorist purposes)

7. Transfer	X	Weapons Act, Section 2 (2), cf. the Order of Weapons and Explosives etc., Section 16 (1).	X	Weapons Act, Section 10 Criminal Code, Section 192 a (1) (highly dangerous weapon) Criminal Code, Section 114 (1) (6) (terrorist purposes)
8. Use	X	Weapons Act, Section 2 (1), cf. Section 1 (1) (4)	X	Weapons Act, Section 10 Criminal Code, Section 192 a (1) (highly dangerous weapon) Criminal Code, Section 114 (1) (6) (terrorist purposes)
9. Participate as an accomplice in the a.m. activities	X	Criminal Code, Section 23 (general provision on complicity) Weapons Act, Section 7 c (technical assistance) Criminal Code, Section 114 b (complicity in terrorist offences)		Weapons Act, Section 10 Criminal Code, Section 192 a, (1) and (2) (highly dangerous weapon) Criminal Code, Section 114 (1) (6) and 114 (2) terrorist purposes) Criminal Code, Section 114 b

10. Assist in a.m. activities	X	Criminal Code, Section 23 (general provision on complicity) Weapons Act, Section 7 c (technical assistance) Criminal Code, Section 114 b (complicity in terrorist offences)		Weapons Act, Section 10 Criminal Code, Section 192 a (1) and (2) (highly dangerous weapon) Criminal Code, Section 114 (1) (6) and 114 (2) (terrorist purposes) Criminal Code, Section 114 b
11. Finance a.m. activities	X	Criminal Code, Section 23 (general provision on complicity) Criminal Code, Section 114 a (financing of terrorism) Criminal Code, Section 114 b (complicity in terrorist offences)	X	Weapons Act, Section 10 Criminal Code, Section 192 a (1) and (2) (highly dangerous weapon) Criminal Code, Section 114 (1) (6), and 114 (2) (terrorist purposes) Criminal Code, Section 114 a Criminal Code, Section 114 b

12. a.m. activities related to means of delivery	X	Weapons Act, Section 1 (1) (4) Weapons Act, Section 2, cf., Section 1 (1) (4) Weapons Act, Section 7 a Weapons Act, Section 7 c (technical assistance in relation to missile technology) (manufacture/produce, acquire, possess, stockpile/store, transport, transfer, and use)	X	Weapons Act, Section 10
13. Involvement of non-State actors in a.m. activities*		All regulations apply to non-State actors		
14. Other		Denmark is currently reviewing its weapons legislation in the light of Resolution 1540		

OP 3 d (partially) - Biological, chemical and nuclear weapons

Which of the following legislation, procedures measures, agencies exist to control border crossings, export/import and other transfers of BW, CW and NW and related materials? Can violators be penalized?	**YES**	**National legal framework** **If YES, indicate source document**	**YES**	**Enforcement: civil/criminal penalties, and measures of implementation, etc.** **If YES, indicate source document**
[…]	[…]	[…]	[…]	[…]
3. Control of brokering, trading in, negotiating, otherwise assisting in sale of goods and technology	X	Weapons Act, Section 7 b	X	Weapons Act, Section 10
[…]	[…]	[…]	[…]	[…]
5. Export control legislation in place	X	[…] 3. Weapons Act, Section 6 […]	X	[…] 3. Weapons Act, Section 10
6. Licensing provisions	X	Weapons Act, Section 6	X	Weapons Act, Section 10
[…]	[…]	[…]	[…]	[…]
11. National licensing authority	X	The Ministry of Justice (weapons) The National Agency for Enterprise and Construction (related materials)		

[…]	[…]	[…]	[…]	[…]
19. Intangible transfers	X	Weapons Act, Section 6	X	Weapons Act, Section 10
20. Transit control	X	Weapons Act, Section 6	X	Weapons Act, Section 10
21. Trans-shipment control	X	Weapons Act, Section 6	X	Weapons Act, Section 10
22. Re-export control	X	Weapons Act, Section 6	X	Weapons Act, Section 10
23. Control of providing funds	X	Criminal Code, Section 23 (general rule on complicity) Criminal Code, Section 114 a (financing of terrorism) Criminal Code, Section 114 b (complicity in terrorist offences)	X	Weapons Act, Section 10 Criminal Code, Section 114 a Criminal Code, Section 114 b
24. Control of providing transport services	X	Weapons Act, Section 7 a	X	Weapons Act, Section 10 Criminal Code, Section 114 (2) (transport with terrorist purposes)
25. Control on importation	X	Weapons Act, Section 1 (1) (4)	X	Weapons Act, Section 10 Criminal Code, Section 192 a (1) (highly dangerous weapon) Criminal Code, Section 114 (1) (6) (terrorist purposes)

26. Extraterritorial applicability	X	Weapons Act, Section 7 a Weapons Act, Section 7 b	X	Weapons Act, Section 10 Criminal Code, Section 114 (2) (transport with terrorist purposes)